

1 HONORABLE RICHARD A. JONES
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 KATHLEEN MALEK,

14 Plaintiff,

v.

15 MONTCLAIR HOTEL INVESTORS, et
16 al.,

17 Defendants.

CASE NO. C09-1200RAJ
ORDER

18 **I. INTRODUCTION**

19 This matter comes before the court on the Defendant's motion for summary
20 judgment (Dkt. # 11). Neither party requested oral argument, and the court finds the
21 motion suitable for disposition on the basis of the parties' briefing and supporting
22 evidence. For the reasons explained below, the court GRANTS the motion (Dkt. # 11).

23 **II. BACKGROUND**

24 Before September 11, 2006, Plaintiff Kathleen Malek was employed as a
25 housekeeper at the Holiday Inn Renton, which was managed by Defendant Sunstone
26 Hotel Properties ("Sunstone"). Sunstone sold the Holiday Inn Renton to Trinity Hotel

1 Investors, LLC (“Trinity”), on September 11, 2006, and Trinity engaged Montclair Hotel
 2 Investors (“Montclair”) to operate the hotel. *See* Sanford Decl., ¶¶ 4-5. The sale closed
 3 at 11:59 p.m. on September 11, 2006, and as of that date and time, management of the
 4 hotel passed from Sunstone to Montclair. Also on that date, Sunstone terminated all of
 5 the Holiday Inn Renton employees, and Montclair had communicated an intent to
 6 transition them to employment with Montclair. *See* Zissler Decl. (Dkt. # 15-1), Ex. 1 at
 7 21:21-25.

8 On the morning of September 12, after Ms. Malek had allegedly worked for
 9 multiple hours, Montclair employees informed Ms. Malek that Montclair would not hire
 10 her to work at the Holiday Inn Renton. *See* Sanford Decl., ¶¶ 9-10; Hansen Decl., ¶ 12.
 11 Ms. Malek filed a complaint with the Equal Employment Opportunity Commission
 12 (“EEOC”), alleging that the decision not to hire her was discriminatory on the basis of
 13 age and disability.¹ Ms. Malek later filed this lawsuit, alleging state and federal claims of
 14 employment discrimination, negligent supervision and/or retention,² outrage, and
 15 violation of Washington’s Minimum Wage Act. Though Ms. Malek named many parties
 16 as Defendants in this lawsuit, she only served the summons and complaint on Sunstone.
 17 Sunstone now moves for summary judgment.

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¹ It appears that the EEOC did not distinguish between the actions of Montclair employees and
 22 the actions of Sunstone employees in finding “reasonable cause to believe that there is a
 23 violation of the [Americans With Disabilities Act] as the investigation found that
 24 [Sunstone/Montclair] regarded the Charging Party as disabled, and used this misperception to
 25 deny her continued employment.” *Compare* Grant Decl., Ex. 1, with 2d Zissler Decl. (Dkt. # 25),
 Ex. 1. Because the only entity that denied Ms. Malek “continued employment” was Montclair,
 assuming that the EEOC letters are properly before the court, the court finds that they do not
 support Sunstone’s liability in this lawsuit.

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² Ms. Malek conceded in her Opposition that the negligence claim should be dismissed. *See*
 Pltf.’s Opp’n (Dkt. # 17) at 2:1-2.

III. ANALYSIS

A. Legal Standards.

Summary judgment is appropriate if the moving party establishes that there is no genuine dispute of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

B. Plaintiff's Claims Against Sunstone Fail as a Matter of Law Because None of the Plaintiff's Claims are Based on Sunstone's Conduct.

The crux of Sunstone’s argument for summary judgment is that the action that gave rise to all of Ms. Malek’s claims — namely, the decision not to hire Ms. Malek on September 12 — was taken by Montclair, not Sunstone. Though Ms. Malek opposes Sunstone’s motion, she nonetheless does not dispute that Sunstone terminated all of its employees on September 11 due to the sale of the hotel, or that Montclair employees made the decision not to hire Ms. Malek on September 12. *See* Zissler Decl. (Dkt. # 15), Ex. C at 77:1-80:2 (Ms. Malek’s deposition describing Montclair’s decision not to hire her); Grant Decl. (Dkt. # 17-1), Exs. 3-4 (e-mails between Montclair employees describing Sunstone’s termination of all its employees, and Montclair’s decision not to hire Ms. Malek).

Ms. Malek’s admission (in her deposition testimony cited above and in her Opposition at 3:2, 7:14, 9:24-25, 10:13-16) that *Montclair* was the entity that made the decision not to hire her is fatal to all of her claims, because that action is the basis for her employment discrimination claims and the outrage claim. Ms. Malek’s wage claim is based on the fact that she worked for a number of hours on September 12 before *Montclair* informed her that *Montclair* was not hiring her, and then did not pay for that work — and again, Ms. Malek asserts that *Montclair* failed to pay for that work, not Sunstone. *See* Pltf.’s Opp’n at 9:22-25 (“[Ms. Malek] was never paid . . . and was only told she was not a *Montclair* employee after *it* benefited from her services.”) (emphasis

1 added). Though Ms. Malek named Montclair and Montclair employees as Defendants in
2 this lawsuit, she did not serve them with the summons and complaint.³ Because there is
3 no dispute that Sunstone, the only Defendant who has been served with the summons and
4 complaint, did not take any of the actions complained of by Ms. Malek, there is no
5 genuine dispute of material fact with regard to Sunstone and Sunstone is entitled to
6 judgment as a matter of law.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the court GRANTS the Defendant's motion (Dkt. # 11).
9 DATED this 7th day of February, 2011.

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12 The Honorable Richard A. Jones
13 United States District Judge
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26 ³ Because more than 120 days have passed since the complaint was filed, the court dismisses Ms.
27 Malek's claims against the unserved Defendants without prejudice, under Federal Rule of Civil
Procedure 4(m).